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Proposed Counsel to the Debtors and the Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
: :  
HOUGHTON MIFFLIN : Case No. 12-\_\_\_\_ (\_\_\_\_)  
HARCOURT PUBLISHING COMPANY, *et al.*,<sup>1</sup> :  
: Joint Administration Pending  
Debtors. :  
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**MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING  
DEBTORS TO (I) MAINTAIN AND USE EXISTING BANK ACCOUNTS,  
BOOKS, RECORDS AND BUSINESS FORMS; (II) MAINTAIN AND USE  
EXISTING CASH MANAGEMENT SYSTEM; (III) PROVIDE  
SUPERPRIORITY STATUS FOR INTERCOMPANY RECEIVABLES;  
AND (IV) WAIVE THE DEPOSIT AND INVESTMENT GUIDELINES  
OF SECTION 345 OF THE BANKRUPTCY CODE**

Houghton Mifflin Harcourt Publishing Company (“Houghton Mifflin”)

and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Houghton Mifflin Harcourt Publishing Company (6030), Houghton Mifflin Harcourt Publishers Inc. (7305), HMH Publishers, LLC (7173), Houghton Mifflin Holding Company, Inc. (2898), Houghton Mifflin, LLC (2961), Houghton Mifflin Finance, Inc. (2812), Houghton Mifflin Holdings, Inc. (0674), HM Publishing Corp. (5843), Riverdeep Inc., a Limited Liability Company (9612), Broderbund LLC (6113), RVDP, Inc. (2557), HRW Distributors, Inc. (4902), Greenwood Publishing Group, Inc. (4537), Classroom Connect, Inc. (3282), ACHIEVE! Data Solutions, LLC (7499), Steck-Vaughn Publishing LLC (6929), HMH Supplemental Publishers Inc. (7571), HMH Holdings (Delaware), Inc. (6372), Sentry Realty Corporation (6742), Houghton Mifflin Company International, Inc. (9100), The Riverside Publishing Company (0173), Classwell Learning Group Inc. (9252), Cognitive Concepts, Inc. (5986), Edusoft (9992), and Advanced Learning Centers, Inc. (2861).

“Debtor,” and collectively, the “Debtors”), by and through their undersigned counsel, hereby move this Court for entry of interim and final orders substantially in the form attached hereto as Exhibits D and E, pursuant to sections 105(a), 345(b), 363 and 364, 503, 1107 and 1108 of title 11 of the United States Code, (the “Bankruptcy Code”), authorizing the Debtors to (i) maintain and use their existing bank accounts (the “Bank Accounts”), books, records and business forms; (ii) maintain and use their existing cash management system; (iii) provide superpriority status for intercompany receivables; and (iv) waive the deposit and investment guidelines of section 345 of the Bankruptcy Code. In support of this motion (the “Motion”), the Debtors rely upon the Affidavit of William F. Bayers (the “Bayers Affidavit”), general counsel to the Debtors, pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”) filed contemporaneously herewith and incorporated herein by reference, and respectfully state as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Sections 105(a), 345(b), 363(c)(1) and 364(c), 503, 1107 and 1108 of the Bankruptcy Code provide the statutory predicate for the requested relief herein.

### **BACKGROUND**

2. On the date hereof (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. As described more fully below, contemporaneously with the filing of their petitions, the Debtors also filed their Prepackaged Joint Plan of Reorganization (the “Prepackaged Plan”) to implement a restructuring of certain of the Debtors’ outstanding indebtedness and existing equity interests. Although the solicitation period remains open, as of the Petition Date, 90.3% of the total amount of creditors entitled to vote on the Prepackaged Plan voted in favor of the Prepackaged Plan and 76% in amount of equity holders entitled to vote on the Prepackaged Plan voted in favor of the Prepackaged Plan. The Debtors did not receive any ballots rejecting the Prepackaged Plan. As a result of the overwhelming support for the Prepackaged Plan, the Debtors intend to move forward with confirmation of the Prepackaged Plan at the Court’s earliest available date.

4. As of the date hereof, no creditors’ committee, trustee or examiner has been appointed in these cases.

5. The Debtors comprise one of the leading educational publishers in the U.S. public school market (known as kindergarten to grade 12 or “K-12”). The Debtors offer a diverse portfolio of products and services, including textbooks, workbooks, supplemental materials, technology-based products, teaching guides, various types of standardized and customized tests, professional assessment products, and a wide range of trade and reference titles. The Debtors are organized into the following two divisions: education and trade and reference. The education division is the largest division and represents approximately 90% of the Debtors’ total revenue. The Debtors’ revenue and EBITDA for the year ended December 31, 2011 were approximately \$1.295 billion and \$238 million, respectively.

6. The global financial crisis over the past several years has negatively affected the Debtors' recent financial performance. The Debtors' business depends largely on state and local funding and the recession-driven decreases in state spending as well as significant purchase deferrals in key states and territories resulted in material reductions in the overall size of the Debtors' key K-12 market. Lack of anticipated federal stimulus support also contributed to the Debtors' substantial revenue decline. As a result of the deteriorating macroeconomic conditions, the Debtors, along with certain of their non-debtor affiliates, implemented a consensual out-of-court restructuring in March, 2010. Despite the out-of-court restructuring, due to the continuing contraction of funds for state education spending and higher deferrals of awarded business than expected, the Debtors have continued to experience financial difficulties. On or about December 22, 2011 and December 29, 2011, the Debtors entered into amendments to their first lien credit facility and receivables facility, respectively (collectively, the "Amendments").

7. Notwithstanding the Amendments, the Debtors have determined that a complete delevering of their capital structure is now necessary. In or about March 2012, significant holders of claims under the Debtors' first lien credit facility (the "First Lien Credit Facility") and the 10.5% Notes formed an informal creditor group (the "Informal Creditor Group"). Since its formation, the Informal Creditor Group and its advisors have engaged in constructive dialogue with the Debtors regarding a comprehensive restructuring of the Debtors' outstanding debt and equity.

8. After months of good faith, arm's length negotiations among the Debtors and the Informal Creditor Group and their respective advisors, the parties

reached an agreement on the terms of a restructuring to completely delever the Debtors' balance sheet. The Debtors have commenced these Chapter 11 Cases to implement the terms of the agreement which has been embodied in the Prepackaged Plan and the accompanying Restructuring Support Agreement (as defined in the Prepackaged Plan).

## **THE DEBTORS' CASH MANAGEMENT SYSTEM**

### **A. Overview**

9. The Debtors have maintained an integrated and efficient centralized cash management system to: (i) manage borrowing activity under various credit facilities, including an accounts receivable securitization facility, as well as interest payments on the First Lien Credit Facility and the 10.5% Notes<sup>2</sup>; (ii) manage the Debtors' cash flow and cash needs by collecting and distributing funds generated from operations; (iii) manage the Debtors' investment activity; and (iv) transfer funds between and among the Debtors' and non-Debtor affiliates, both foreign and domestic (the "Cash Management System"). The Debtors' treasury department ("Treasury") exercises primary oversight over the Cash Management System.

10. The Debtors' Cash Management System consists of forty (40) active bank accounts at thirteen (13) banking and investment institutions (collectively, the "Bank Accounts"). Each Bank Account maintained by the Debtors is set forth on the attached Exhibit C.

11. The Cash Management System is similar to those commonly employed by corporate enterprises comparable to the Debtors in economic scope and

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<sup>2</sup> For purposes of this Motion, claims under the First Lien Credit Facility and the 10.5% Notes are referred to collectively as "Prepetition Senior Creditor Claims" and the holders thereof as "Prepetition Senior Creditors."

geographic reach. The Debtors' continued use of the Cash Management System is integral to its ability to efficiently and effectively (i) control, monitor, report and forecast the Debtors' cash positions; (ii) ensure cash availability; (iii) reduce administrative expenses by facilitating the movement of funds; and (iv) optimize the use of those funds among entities, thereby minimizing external borrowings and maximizing investment returns. These benefits of the Cash Management System necessarily enhance the value of the Debtors' businesses. The movement of funds through the Debtors' Cash Management System is described further below and is illustrated by the charts attached as Exhibit A and Exhibit B hereto.

**B. Cash Position Forecasting**

12. The Debtors manage cash and investments through a rolling cash forecast model ("Cash Forecast") that shows all expected collections and cash disbursements on a daily basis. Treasury employees create the Cash Forecast for the year based on historical information and forecasts from various departments which tie into the Debtors' budget. Forecasted information includes: (i) a collections forecast based on forecasted sales and returns, with values updated with actual amounts as monthly activity becomes available; (ii) payroll forecasts based on employment changes and previous actual payroll disbursements; (iii) sales and use tax disbursement forecasts based on forecasted sales in various states and countries; and (iv) accounts payable forecasts calculated on a weekly basis.

13. The Cash Forecast is updated with actual amounts when available which include: (i) lockbox reports showing actual collections; (ii) operating account activity (defined below); (iii) Automated Clearing House ("ACH") and check disbursement reports; and (iv) payroll reports.

14. Treasury uses the Cash Forecast to reconcile the central Bank of America operating and concentration account (the “Operating Account”) on a daily basis. Treasury researches any activity in the Operating Account that was not forecasted and will update the Cash Forecast model accordingly. The Cash Forecast is saved onto a share drive for corporate accounting (“Accounting”) and Treasury management to review. Accounting uses the Cash Forecast to post entries in the Debtors’ general ledger detailing borrowing and investing activity on a monthly basis. Treasury employees compare the Cash Forecast with actual expenditures and reconcile any variances on a monthly basis.

15. Treasury employees also review the Cash Forecast daily to evaluate the Debtors’ cash position and to make decisions regarding borrowing and investing. The Debtors receive the bulk of their collections during the months of August through October. Consequently, the Debtors borrow more heavily during the six month period from February through August. When the Debtors are in a negative cash position they will make decisions regarding the types and amounts of borrowing the Debtors will need to undertake. When the Debtors are in a positive cash position, they will make decisions regarding the types and amounts of investments the Debtors will make.

**C. Cash Collection**

16. Houghton Mifflin maintains two lockboxes located at Bank of America for receipt of checks and two credit card accounts at Bank of America for receipt of credit card receipts for trade and internet sales (collectively, the “Houghton Mifflin Accounts”). Customers may also remit payments via wire transfer or ACH to the Collection Accounts.

17. Greenwood Publishing Group, Inc. ("Greenwood") also maintains three accounts with Bank of America for local deposits and petty cash in New Hampshire as well as for credit card receipts (collectively, the "Greenwood Accounts" and together with the Houghton Mifflin Accounts, the "Collection Accounts").

18. Furthermore, Houghton Mifflin maintains two accounts with Bank of America into which it deposits receivables the Debtors receive in pounds sterling ("GBP") and in Euro (respectively, the "GBP Account" and the "Euro Account"). The Debtors also utilize the GBP Account and Euro Account to pay disbursements in GBP or Euro rather than purchase foreign currency from their domestic central operating account. Houghton Mifflin Company International, Inc. also maintains a Bank of America value-added tax ("VAT") refund account used to receive any tax refunds issued from certain taxing authorities to Houghton Mifflin Company International, Inc.

**D. Cash Concentration**

19. The cash in the Collection Accounts is manually swept into the Operating Account. The funds in the Houghton Mifflin lockbox and credit card accounts are swept on a daily basis. The funds in the Greenwood Accounts for local deposits and petty cash are swept on a weekly basis.

**E. Cash Disbursement**

20. Once funds are collected into the Central Account, they may then be transferred into (i) a Bank of America payroll account, for payments to the Debtors' employees; (ii) a Wachovia disbursements account, for payments to the Debtors' vendors (the "Wachovia Account"); (iii) a Bank of America Flexible Spending Health Care



Account; (iv) a Bank of America disbursement account for payments to Williams Lea<sup>3</sup> in exchange for the provision of global supply chain outsourcing services for manufacturing purposes; or (v) one of several additional accounts, many of which are used for investment purposes.

21. Accounts payable disbursements occur weekly primarily through ACH.

22. All disbursements are subject to institutional controls under a reservation of authority policy (“Reservation of Authority”). The Reservation of Authority helps to ensure that all expenditures of the Debtors’ funds are appropriately authorized by creating authorization limits for certain of the Debtors’ personnel to be followed in the day-to-day operation of the Debtors’ businesses.

23. Under the Reservation of Authority, the following three types of expenditures require a purchase order: (i) all inventory-related purchases; (ii) all fixed asset purchases; and (iii) expenditures exceeding \$5,000 unless specifically excluded by the Reservation of Authority. Purchase orders and invoices not subject to the aforementioned purchase order requirement or issued pursuant to a contract must receive transaction authority in accordance with strict dollar value approval limits based on the employees’ management level. The right to approve expenditures is not automatic and must be formalized by a signed reservation of authority form granting those rights within the Reservation of Authority framework, which is described below:

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<sup>3</sup> Part of the service provided by Williams Lea involves the reconciliation of manufacturing invoices with purchase orders and warehouse records of what has been received, and then issuing payment against those manufacturing invoices. These payments are transacted through the Bank of America Williams Lea disbursements account, to which Williams Lea representatives have access.

- Approval by the Debtors' Board of Directors is required for projects involving print or electronic works for which the aggregate investment in plant, grant, advances, and outside editorial/development exceeds \$50 million.
- Division and/or subsidiary presidents (the "Division Presidents") have the authority to approve projects in varying amounts up to \$1.5 million.
- Corporate Executive Vice Presidents in Legal and Human Resources, as well as the Corporate Controller and Corporate Treasurer, have the authority to approve projects in varying amounts up to \$2.5 million.
- The Debtors' Chief Operating Officer and the Chief Financial Officer have the authority to approve projects in varying amounts up to \$5 million and Chief Executive Officer ("CEO") approval is required for projects in excess of \$5 million.
- The CEO may delegate to the Division Presidents the authority to explore editorial or marketing opportunities at a cost not to exceed \$100,000 to \$250,000, depending on the division.
- All general and payroll disbursements must comply with certain check-signing requirements in accordance with the Reservation of Authority policy. ACH and wire transfers are subject to the approval limits based on the Employees' management level as described above. Two different individuals in Treasury or the corporate controller must initiate and release wire transfers for them to be processed.
- The Reservation of Authority also provides that Treasury has the authority to move funds between domestic Debtor accounts as necessary. The Treasurer, Assistant Treasurer, or Corporate Controller must approve any movement of funds greater than \$500,000.

**F. Intercompany Claims**

24. In the normal course of business, the Debtors engage in various intercompany transactions (the "Intercompany Transactions") with other Debtors and their non-Debtor affiliates. As a result, at any given time, numerous Intercompany Transactions exist that reflect intercompany payments and receivables made in the ordinary course between and among the Debtors and other Debtors as well as between

and among the Debtors and certain of their non-debtor affiliates (the “Intercompany Claims”).

25. Intercompany Claims represent, but are not limited to, the following: (1) costs for Dublin office rent; (2) payroll; (3) reimburseable business expenses; and (4) operating expenses.

26. The Debtors transfer funds to international affiliates electronically via relationships with Western Union, Goldman Sachs, and Wells Fargo. The Debtors will initiate a wire transfer from their Operating Account to one of these three institutions, with instructions to either convert to foreign currency or to send to the Debtor or non-Debtor affiliate in U.S. dollars.

27. The Debtors have entered into forward contracts to purchase foreign currency with U.S. dollars at a pre-determined rate. These forward contracts are transacted through either Western Union or Wells Fargo. Although the Debtors will not enter into any new forward contracts during the chapter 11 cases, the Debtors expect to pay \$2.5 million in forward contract settlements during the course of the cases. From time to time, the Debtors will purchase foreign currency at the current exchange rate (“Spot Purchases”) in order to pay bills or transfer funds to the Debtors’ subsidiaries or affiliates in foreign currency. These Spot Purchases are transacted through Western Union, Goldman Sachs, or Wells Fargo.

28. The Debtors maintain records of Intercompany Claims between and among themselves, as well as between the Debtors and non-Debtor affiliates.

29. As noted in the Bayers Declaration, the Prepackaged Plan has been accepted by the requisite amount and number of stakeholders voting on the plan and all

other stakeholders are unimpaired or deemed to reject the Prepackaged Plan. Therefore, the Debtors submit that no party will be prejudiced by the continuation of the Cash Management System, and, in particular, the Intercompany Transactions. To the contrary, as explained below, the continuation of the Cash Management System, including the existing Bank Accounts, is necessary to ensure the Debtors' smooth transition into chapter 11, as any disruption could cause immense and irreparable harm to the Debtors' estates.

### **RELIEF REQUESTED**

30. Pursuant to this Motion, the Debtors request entry of first, an interim order (the "Interim Order") in the form attached hereto as Exhibit D, and then a final order (the "Final Order") in the form attached hereto as Exhibit E, pursuant to sections 105(a), 363 and 364(c)(1), 503, 1107 and 1108 of the Bankruptcy Code (i) authorizing the continued use of existing Bank Accounts, books, records and business forms; (ii) authorizing the continued use of the Cash Management System described herein as modified to the extent described below; (iii) granting superpriority status for intercompany receivables; and (iv) waiving the deposit and investment guidelines of section 345 of the Bankruptcy Code. The Debtors also request that the Court schedule a final hearing on the requested relief.

### **The Court Should Authorize the Debtors to Continue Their Cash Management System**

31. In the ordinary course of business and prior to the Petition Date, the Debtors used the centralized Cash Management System described above. As discussed herein, the Cash Management System is designed for the efficient collection,

transfer and disbursement of funds generated through the Debtors' operations and to accurately record such collections, transfers and disbursements as they are made.

32. The Cash Management System is an ordinary course, essential business practice of the Debtors. The system is beneficial to the Debtors, their estates and their creditors because it enables the Debtors to (i) reduce the administrative expenses involved in moving funds; (ii) maintain accurate information regarding receipts, account balances and disbursements; (iii) reduce external borrowings; and (iv) ensure compliance with the Debtors' accounting and disbursement control procedures. Maintenance of the existing Cash Management System also will avoid potential disruption to the Debtors' businesses that could delay the Debtors' emergence from chapter 11.

33. This Court has the authority to grant the relief requested herein pursuant to its equitable powers under section 105(a) of the Bankruptcy Code. Section 105(a) provides that "[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The Debtors submit that the relief requested herein is both necessary and appropriate to allow the Debtors to preserve the benefits of the Cash Management System, and avoid any disruption that would undermine or jeopardize the value of their estates.

34. Furthermore, bankruptcy courts have noted that requests for authority to continue utilizing existing cash management systems can be relatively "simple matters." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). Courts have recognized that cash management systems permit efficient utilization

of cash resources and that to deny debtors authority to continue to utilize their cash management systems would impose a “huge administrative burden” on debtors’ estates. *In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1061 (3d Cir. 1993).

35. Furthermore, in *In re Charter Co.*, 778 F.2d 617 (11<sup>th</sup> Cir. 1985), the Eleventh Circuit Court of Appeals held that an order authorizing the debtor to continue utilizing a routine cash management system “as had been usual and customary in the past” was “entirely consistent” with applicable provisions of the Bankruptcy Code, which permit a debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” *Id.* at 621 (*citing* 11 U.S.C. §363(c)(1)). The purpose of section 363(c)(1) is to provide a debtor in possession with the flexibility to engage in ordinary course transactions required to operate its business without excessive oversight by its creditors or the court. *See, e.g. In re Enron Corp.*, 2003 Bankr. LEXIS 2111, \*53 (Bankr. S.D.N.Y. 2003). The Cash Management System is crucial to the Debtors’ daily business operations, and the Debtors will continue to operate the Cash Management System in the ordinary course. Accordingly, the Debtors submit that the Court also has authority under section 363(c)(1) of the Bankruptcy Code to grant the requested relief.

36. Authorizing debtors to continue to operate prepetition cash management systems has been approved by courts in this district in other large chapter 11 cases. *See e.g., In re Dynegy Holdings, LLC*, Case No. 11-38111 (CGM) (Bankr. S.D.N.Y. Jan. 26, 2012) [Docket No. 370]; *In re General Maritime Corp.*, 11-15285 (MG) (Bankr. S.D.N.Y. Dec. 28, 2011) [Docket No. 155]; *The Great Atlantic & Pacific Tea Co., Inc.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011) [Docket No.

733]; *In re Reader's Digest Assoc., Inc.*, 09-23529 (RDD) (Bankr. S.D.N.Y. Nov. 23, 2009) [Docket No. 306]; *In re Lehman Bros. Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Nov. 6, 2008) [Docket No. 1416].

**The Court Should Approve the Debtors' Continued Use of Existing Bank Accounts**

37. The Operating Guidelines and Reporting Requirements (the "Operating Guidelines") promulgated by the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") require that a chapter 11 debtor close its prepetition bank accounts and open new accounts. This requirement is designed to (i) provide a clear line of demarcation between prepetition and postpetition transactions and operations; and (ii) block the inadvertent payment of prepetition claims through the payment of checks drawn prior to the commencement of a debtor's case.

38. The Debtors can achieve the goals of the Operating Guidelines without closing their existing Bank Accounts and opening new ones. The Debtors have requested authority to pay all prepetition general unsecured claims in the ordinary course of business. Accordingly, there should be no prejudice to creditors or confusion to the banks regarding which checks may be properly paid. In the event this Court does not authorize payment of prepetition claims, the Debtors will identify all prepetition checks and other forms of payment outstanding on the Petition Date and notify the appropriate bank not to pay such checks or obligations. The systems currently employed by the Debtors and their banks are sufficient to ensure that prepetition obligations are not paid improperly.

39. Moreover, requiring the Debtors to close all existing accounts and open new debtor-in-possession accounts would not be in the best interests of their estates. The exercise would (i) be costly; (ii) disrupt the Debtors' ability to satisfy

postpetition payables in a timely manner, potentially causing a loss of trade credit and customer confidence; (iii) interfere with the efficient management of the Debtors' cash resources; and (iv) distract the Debtors' managers at a time when the Debtors' business requires their full attention. Indeed, approximately half of the Debtors' Bank Accounts are maintained at banks on the United States Trustee's List of Authorized Bank Depositories, which significantly reduces any risk to these estates posed by leaving the Bank Accounts in place.

40. In other large chapter 11 cases, courts have recognized that the strict enforcement of the requirement that a debtor close its prepetition bank accounts does not serve the rehabilitative purposes of chapter 11. Accordingly, courts in this District have regularly entered orders authorizing debtors in chapter 11 cases to maintain their prepetition bank accounts. *See e.g., In re Eastman Kodak Co.*, Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 16, 2012) [Docket No. 376]; *In re MK Network, LLC*, Case No. 11-10859 (SHL) (Bankr. S.D.N.Y. Mar. 3, 2011) [Docket No. 15]; *The Great Atlantic & Pacific Tea Co., Inc.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011) [Docket No. 733]; *In re Lehman Bros. Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Nov. 6, 2008) [Docket No. 1416]; *In re Paper Int'l Inc.*, Case No. 08-13917 (RDD) (Bankr. S.D.N.Y. Oct. 10, 2008) [Docket No. 20]; *In re Frontier Airlines Holdings Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. May 2, 2008) [Docket No. 184].

41. Accordingly, the Debtors respectfully request that the existing Bank Accounts be deemed debtor-in-possession accounts and that the Court authorize their maintenance and continued use in the same manner and with the same account



numbers, styles and document forms (including checks) as during the prepetition period, subject only to (i) designation of such accounts in the books and records of the Debtors and by the affected financial institution as debtor-in-possession accounts; and (ii) a prohibition against honoring prepetition checks without specific direction from the Debtors as authorized by the Court. To the extent the Debtors do not receive authority to pay all prepetition general unsecured claims in the ordinary course of business, the Debtors will advise all banks with which they have disbursement accounts not to honor checks issued prior to the Petition Date, except with specific direction from the Debtors, as authorized by this Court. By so advising the banks, the Debtors will achieve the goals of the bank account closing requirement: (i) establishing a clear demarcation between prepetition and postpetition checks; and (ii) blocking the inadvertent payment of prepetition checks — without disrupting their ongoing operations or jeopardizing their creditor relationships.

**The Court Should Grant the Debtors the Authority to Use Existing Business Forms**

42. The Operating Guidelines also require, unless the Court orders otherwise, that a debtor obtain checks that bear the designation “debtor in possession.”

43. In the ordinary course of their business, the Debtors use a variety of checks, purchase orders, letterhead and other business forms (collectively, the “Business Forms”). By virtue of the nature and scope of the businesses in which the Debtors are engaged, and the numerous suppliers of goods and services and other parties with whom the Debtors deal, it is imperative that the Debtors be permitted to continue to use the Business Forms without alteration or change as such Business Forms were in existence immediately before the Petition Date, without reference to the Debtors’ status as debtors in possession.

44. Parties doing business with the Debtors will undoubtedly be aware of each of the Debtors' status as a chapter 11 debtor-in-possession. Changing correspondence and Business Forms would thus be unnecessary, as well as expensive and disruptive to the Debtors' business operations. Furthermore, given the prepackaged nature of these cases, the Debtors expect to emerge from bankruptcy by June 21, 2012. Accordingly, to minimize expenses, the Debtors request that the requirement of the U.S. Trustee be waived until confirmation of the Prepackaged Plan, and that the Debtors be permitted to use their Business Forms in substantially the form they existed prior to the Petition Date and without the legend.

**The Court Should Order Superpriority Status for Intercompany Receivables**

45. The Cash Management System directs funds to each affiliate in accordance with its operational needs. From time to time, this may have the effect of rendering some affiliates net lenders and some net borrowers. To resolve any concerns related to the repayment of funds moved by and between debtors in a chapter 11 case, courts typically grant superpriority status to postpetition intercompany claims. *See e.g., In re General Maritime Corp.*, 11-15285 (MG) (Bankr. S.D.N.Y. Dec. 28, 2011) [Docket No. 155]; *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011) [Docket No. 161]; *In re Great Atlantic & Pacific Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011); *In re Reader's Digest Assoc., Inc.*, 09-23529 (RDD) (Bankr. S.D.N.Y. Nov. 23, 2009) [Docket No. 306]; *In re Lehman Bros. Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Nov. 6, 2008) [Docket No. 1416]; *In re Bally Total Fitness of Greater New York, Inc.*, Case No. 08-14818 (BRL) (Bankr. S.D.N.Y. Dec. 5, 2008) [Docket No. 37].

46. The Prepackaged Plan contemplates the substantive consolidation of the Debtors. Nevertheless, in an abundance of caution and to ensure that each individual Debtor will not, at the expense of its respective creditors, fund the operations of another Debtor entity, the Debtors request that, pursuant to section 364(c)(1) of the Bankruptcy Code, all intercompany claims between the Debtors arising after the Petition Date be accorded superpriority status with priority over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, other than (i) any superpriority claims granted to the postpetition lenders, (ii) any claims under section 507(b) of the Bankruptcy Code granted to the Prepetition Secured Creditors, (iii) the Prepetition Secured Creditor Claims and (iv) any priorities, liens, claims and security interests that may be granted by the Court, from time to time.

**The Court Should Waive the Investment and Deposit Guidelines of Section 345 of the Bankruptcy Code, As Applicable**

47. The Debtors also request that the Court waive, to the extent necessary, the requirements of section 345(b) of the Bankruptcy Code to permit them to maintain their investments in accordance with their existing deposit practices.

48. Section 345(a) of the Bankruptcy Code authorizes deposits of money, such as the Debtors' cash, in a manner that "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code provides that a debtor in possession must require a bond from the entity with which the money is

deposited or invested in favor of the United States secured by the undertaking of an adequate corporate surety. Alternatively, the debtor in possession may require the entity to deposit securities of the kind specified in section 9303 of title 31 of the United States Code.

49. The Court's ability to excuse strict performance of the deposit and investment requirements of section 345(b) of the Bankruptcy Code for "cause" arises from the 1994 amendments to the Bankruptcy Code. The legislative history of that amendment provides:

Section 345 of the Code governs investments of funds of bankruptcy estates. The purposes [sic] is to make sure that funds of a bankrupt that are obliged to creditors are invested prudently and safely with the eventual goal of being able to satisfy all claims against the bankruptcy estate. Under current law, all investments are required to be FDIC insured, collateralized or bonded. While this requirement is wise in the case of smaller debtors with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors. This section would amend the Code to allow the courts to approve investments other than those permitted by section 345(b) for just cause, thereby overruling *In re Columbia Gas Systems, Inc.*, 33 F.3d 294 (3d Cir. 1994).

*In re Service Merchandise Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999)

(quoting H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994)).

50. In determining whether the "for cause" standard has been met, the Court should consider the "totality of the circumstances", utilizing the following factors:

- (a) the sophistication of the debtor's business;
- (b) the size of the debtor's business operations;
- (c) the amount of investments involved;

- (d) the bank ratings (Moody's and Standard and Poor) of the financial institutions where the debtor-in-possession funds are held;
- (e) the complexity of the case;
- (f) the safeguards in place within the debtor's own business of insuring the safety of the funds;
- (g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) the benefit to the debtor;
- (i) the harm, if any, to the estate; and
- (j) the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.

*Service Merchandise*, 240 B.R. at 896.

51. Examining these factors, the court in *Service Merchandise* concluded that "cause" existed because the debtors were "large, sophisticated [companies] with a complex cash management system" that had the capacity to shift funds as need to ensure their safety. *Id.* The court concluded that the benefits of waiving the requirements of section 345(b) far outweighed any potential harm to the estates, and failure to waive the requirements "would needlessly handcuff these debtors' reorganization efforts." *Id.* at 896-97.

52. In the present case, the funds held in sixteen (16) Bank Accounts (the "FDIC Insured Bank Accounts"), are fully insured by the FDIC. Accordingly, they are secure and strictly comply with the requirements of section 345(b). An additional two Bank Accounts are insured by the FDIC to up to \$250,000. In addition, twenty-six (26) of the Debtors' Bank Accounts are maintained at banks that have been approved by the U.S. Trustee for the Southern District of New York (the "U.S. Trustee") as authorized

depositories (the “Authorized Depositories”). Accordingly, the Debtors believe that any funds that are deposited in these accounts are secure and that they therefore comply with the requirements of section 345(b).<sup>4</sup>

53. Approximately nine (9) Bank Accounts, however, are not FDIC insured and located at non-Authorized Depositories (the “Non-Authorized Bank Accounts”). One of these accounts is the Debtors’ pension plan account which is monitored by a trustee. With respect to the funds held in the Non-Authorized Bank Accounts, the Debtors submit that “cause” exists to waive the requirements of section 345(b) of the Bankruptcy Code.

54. First, like the debtors in *Service Merchandise*, the Debtors here are large, sophisticated companies whose estates will receive a significant benefit from the continued availability of funds via the existing Bank Accounts.

55. Second, the funds held in the Non-Authorized Bank Accounts for investment purposes are governed by the Debtors’ investment policy (the “Investment Policy”) which establishes the parameters to be followed to invest the Debtors’ excess or idle cash balances. The primary objective of the Debtors’ Investment Policy is the safety and preservation of invested funds. The Investment Policy specifically prohibits any borrowing of funds for the sole purpose of leveraging the Debtors’ investment portfolio and any investment activity that would be considered speculative according to the principles of conservative investment management. Furthermore, the Investment Policy sets credit quality parameters including that money market funds shall be judged to be of

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<sup>4</sup> To the extent any funds held in the FDIC Insured Bank Accounts or with Authorized Depositories are/become non-compliant or exceed the amounts insured by the FDIC, the Debtors expressly reserve their right to seek a waiver of the section 345(b) requirements as described above.

best quality as denoted by a Moody's rating of AAAm or an S&P's rating of AAA. The Debtors' Investment Policy also establishes a concentration limit for non-governmental investments of a range between \$50 million and \$100 million depending on the company's total portfolio size.

56. Accordingly, the Debtors submit that a waiver of the deposit and investment guidelines set forth in section 345 of the Bankruptcy Code should pose no risk to their estates or their creditors. By contrast, requiring the Debtors to change their deposit and investment procedures abruptly could result in harm to the Debtors, their estates and their creditors due to the disruption of their Cash Management System.

57. Given the complexity and relative security of the Debtors' Cash Management System, the size of the Debtors' business, and the conservative Investment Policy detailed above, the Debtors submit that ample cause exists to waive the requirements of section 345(b) of the Bankruptcy Code until confirmation of the Prepackaged Plan. Courts have granted similar relief in other large chapter 11 cases in this District. *See, e.g., In re Tronox, Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009); *In re DJK Residential LLC*, Case No. 08-10375 (Bankr. S.D.N.Y. 2008).

58. To the extent that funds in the Non-Authorized Bank Accounts exceed the amounts insured by the FDIC, are foreign bank accounts or are not otherwise guaranteed or protected, the Debtors propose to engage in discussions with the U.S. Trustee to determine what modifications to such accounts, if any, would be appropriate.

**Immediate Relief is Necessary to Avoid Immediate and Irreparable Harm**

59. Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") provides that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the

petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition . . . .” Fed. R. Bankr. P. 6003(b).

Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As discussed herein, the Debtors will suffer immediate and irreparable harm absent this Court’s entry of the Interim Order granting the relief requested herein. Consequently, the relief requested herein is consistent with Bankruptcy Rule 6003. By this motion, the Debtors respectfully request that the relief requested herein become effective and enforceable immediately notwithstanding Bankruptcy Rule 6004(h).

### **NOTICE**

60. As of the date hereof, no creditors’ committee, trustee, or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (i) the United States Trustee, Attention: Andrea B. Schwartz; (ii) counsel for the DIP/Exit Agent; (iii) the parties identified on the Debtors’ consolidated list of twenty (20) largest unsecured creditors; (iv) counsel for the Informal Creditor Group; (v) counsel for the Prepetition Senior Secured Notes Trustee; (vi) counsel for the Prepetition Agent; (vii) counsel for the Prepetition L/C Bank; (viii) the Securities and Exchange Commission; (ix) the United States Attorney for the Southern District of New York; (x) the Internal Revenue Service; (xi) the Environmental Protection Agency; (xii) the Pension Benefit Guaranty Corporation; (xiii) the New York State Department of Taxation; (xiv) the New York City Tax Department; and (xv) such other parties entitled



to notice pursuant to Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be provided.

**NO PRIOR REQUEST**

No previous request for the relief sought herein has been made to this or to any other court.

**WHEREFORE**, the Debtors respectfully request that this Court enter the Interim Order and a Final Order, after a scheduled hearing to determine the relief requested herein on a final basis, authorizing the Debtors to (a) maintain and use their existing Bank Accounts, books, records and business forms, (b) maintain and use their existing Cash Management System, (c) provide superpriority status for intercompany receivables, and (d) waive the deposit and investment guidelines of section 345 of the Bankruptcy Code.

Dated: May 21, 2012  
New York, New York

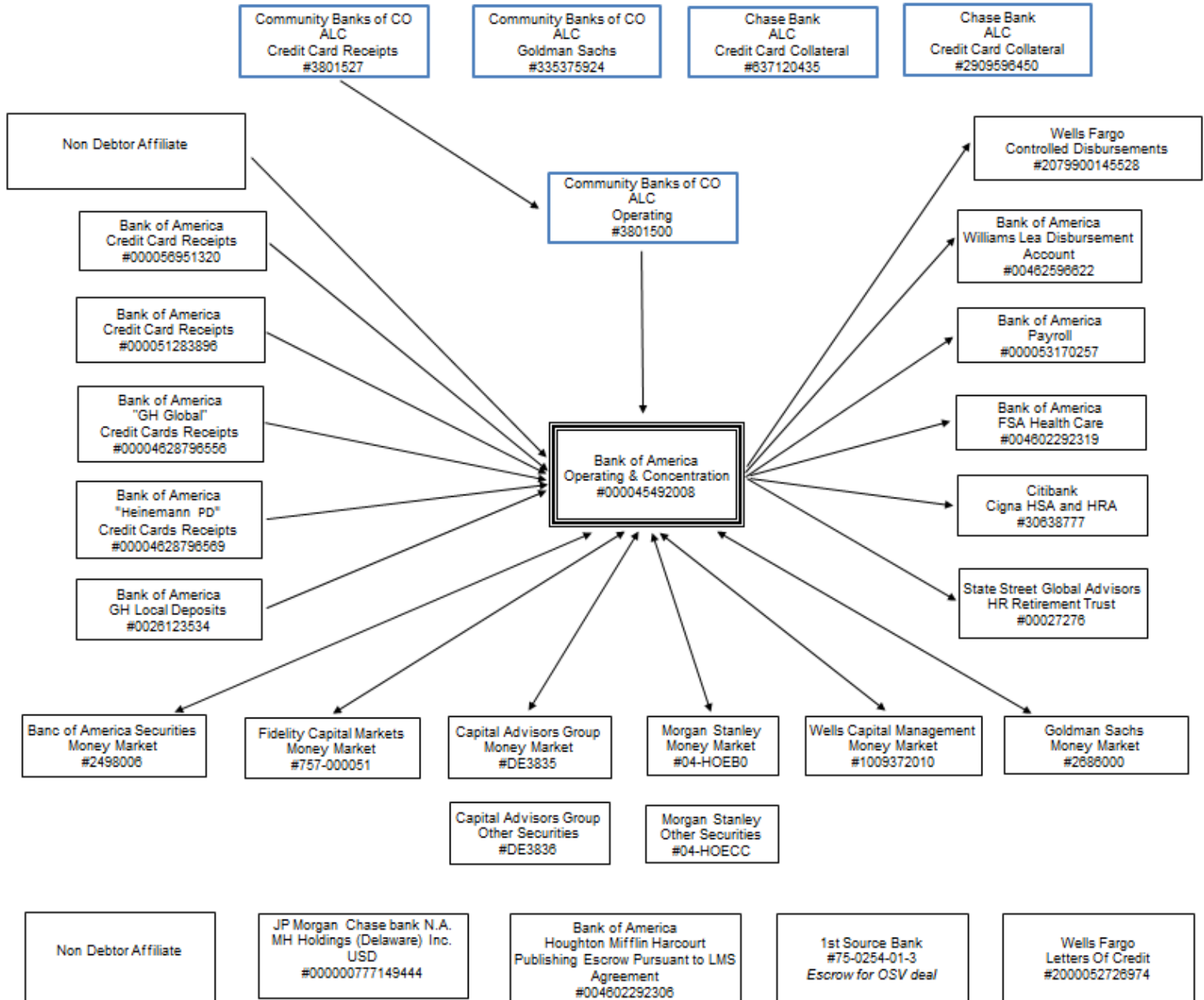
PAUL, WEISS, RIFKIND WHARTON &  
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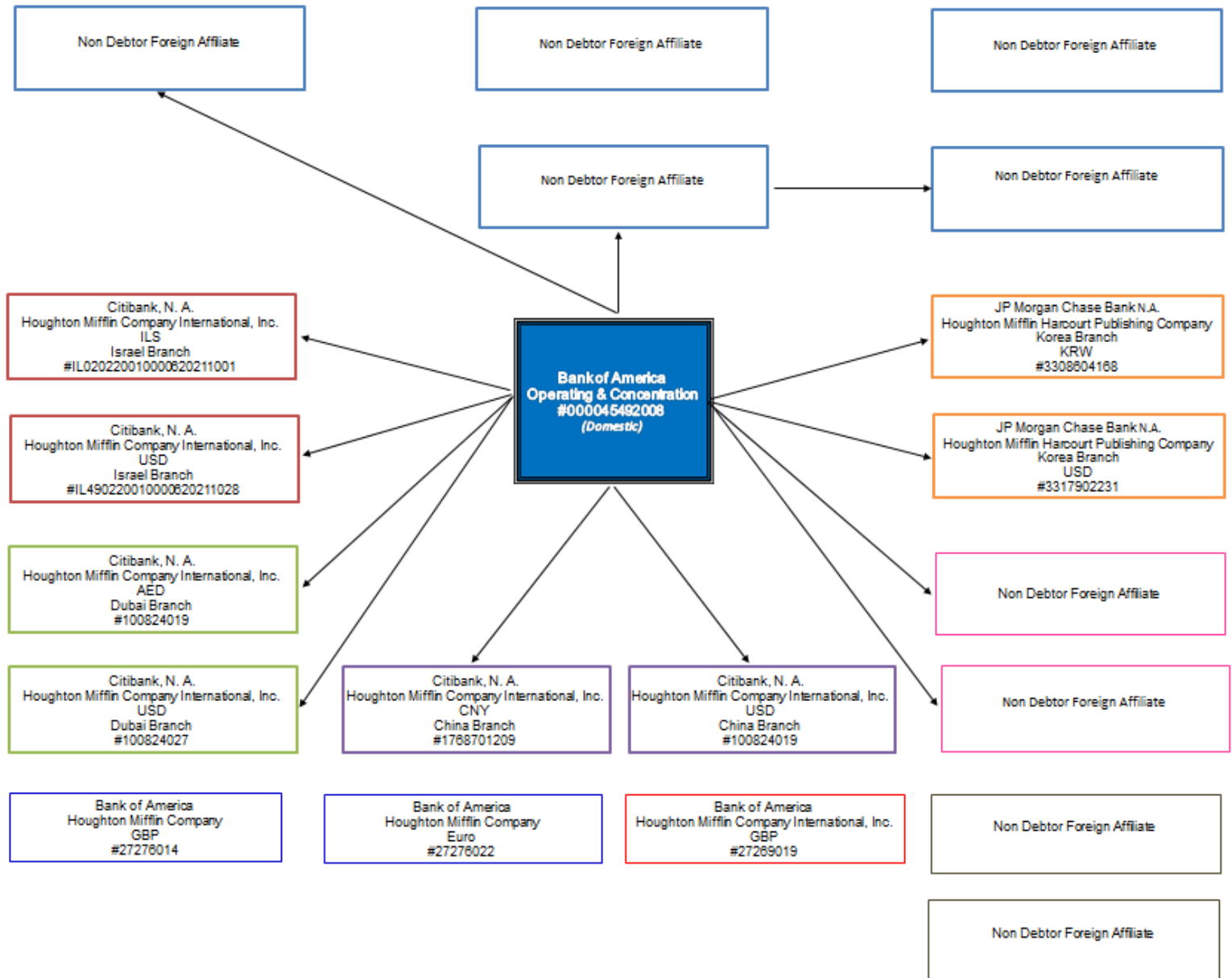
Proposed attorneys for the Debtors and  
Debtors-in-Possession

## EXHIBIT A

### Diagrams of Cash Management System for U.S. Accounts



## Diagrams of Cash Management System for International Accounts



**EXHIBIT C**

**Debtors' Bank Accounts**

Bank and Financial Institution Accounts

Financial Institution	Account Name	Address of Account	Purpose of the Account	Account Number
<b>Houghton Mifflin Harcourt Publishing Company</b>				
Bank of America	Houghton Mifflin Harcourt Publishing Company; Operating Account	135 S. LaSalle St. IL4-135-14-02 Chicago, IL 60603	Main operating & concentration account	X-2008
Bank of America	Houghton Mifflin Harcourt Publishing Company; Trade Credit Card Sales	Same as above	Credit card receipts	X-1320
Bank of America	Houghton Mifflin Harcourt Publishing Company; Internet Sales	Same as above	Credit card receipts	X-3896
Bank of America	Houghton Mifflin Harcourt Publishing Company; Payroll	Same as above	Payroll	X-0257
Bank of America	Houghton Mifflin Harcourt Publishing Company; FSA Health Care	Same as above	Flexible spending	X-2319
Bank of America	Houghton Mifflin Harcourt Publishing Company; Escrow Pursuant to LMS Agreement	Same as above	Escrow established for LMS Agreement deal	X-2306
Bank of America	Houghton Mifflin Harcourt Publishing Company	Same as above	Money Market Investments	X-0806
Bank of America	Houghton Mifflin Harcourt Publishing Company; Williams Lea Disbursements	Same as above	Williams Lea disbursements account	X-6622
Bank of America	Houghton Mifflin Company	2 King Edward Street London EC1A 1HQ	Pounds sterling receipts and disbursements	X-6014
Bank of America	Houghton Mifflin Company International, Inc.	Same as above	Pounds Sterling VAT refunds	X-9019
Bank of America	Houghton Mifflin Company	Same as above	Euro account	X-6022
Wells Fargo Bank	Houghton Mifflin Harcourt Publishing Company	101 Federal Street, Suite 2020 Boston, MA 02110	Disbursements	X-5528

Financial Institution	Account Name	Address of Account	Purpose of the Account	Account Number
Wells Fargo Bank	Houghton Mifflin Harcourt Publishers, Inc.	Same as above	Letter of Credit Facility	X-6974
Goldman Sachs	Houghton Mifflin Harcourt Publishing Company	71 South Wacker Drive Investment Management Division Global Liquidity Management Chicago, IL 60606	Money Market Investments	X-6000
Wells Capital Management	Houghton Mifflin Harcourt Publishing Company	525 Market Street, 10 <sup>th</sup> Floor San Francisco, CA 94105	Money Market Investments	X-2010
Fidelity Capital Markets	Houghton Mifflin Harcourt Publishing Co.	82 Devonshire Street V6B Boston, MA 02109	Money Market Investments	X-0051
Capital Advisors Group	Houghton Mifflin Harcourt Publishing Company	29 Crafts Street Chatham Center, Suite 270 Newton, MA 02458	Money Market Investments	X-3835
Capital Advisors Group	Houghton Mifflin Harcourt Publishing Company	Same as above	Other Securities	X-3836
Morgan Stanley Private Wealth Management	Houghton Mifflin Harcourt Publishing Company	522 Fifth Ave. New York, NY 10036	Money Market Investments	X-0EB0
Morgan Stanley Private Wealth Management	Houghton Mifflin Harcourt Publishing Company	Same as above	Other Securities	X-0ECC
State Street Global Advisors	Houghton Mifflin Company; Retirement Trust	801 Pennsylvania Kansas City, MO 64105	Human Resources retirement trust account	X-7276
Citibank	Houghton Mifflin Company	1 Penns Way New Castle, DE 19720	Cigna Health Care HSA and HRA account	X-8777

**Other HMM Holdings (Delaware), Inc. Subsidiaries**

Financial Institution	Account Name	Address of Account	Purpose of the Account	Account Number
JPMorgan Chase Bank, N.A.	Houghton Mifflin Harcourt Publishing Company	JPMorgan Chase Bank, N.A., Seoul Branch J.P. Morgan Plaza 34-35 Jeong-dong, Jung-gu Seoul 100-120, Korea	Payroll – S Korean Branch office (KRW)	X-4168
JPMorgan Chase Bank, N.A.	Houghton Mifflin Harcourt Publishing Company	Same as above	S Korean Branch office USD account	X-2231

Financial Institution	Account Name	Address of Account	Purpose of the Account	Account Number
JPMorgan Chase Bank, N.A.	HMH Holdings (Delaware) Inc.	One Chase Manhattan Plaza NY1-A155 New York, NY 10005-1401	Bank fees related to JPM access	X-9444
Citibank NA	Houghton Mifflin Company International Beijing Rep Office	Citibank (China) Co., Ltd., 17F, Excel Center No. 6 Wudinghou Street, Xicheng District, Beijing 100033 China	USD Account	X-1004
Citibank NA	Houghton Mifflin Company International Beijing Rep Office	Same as above	CNY Account	X-1209
Citibank NA	Houghton Mifflin Company International Inc. Rep Office	4th Floor, Citibank Tower, Oud Metha Road, PO Box 749, Dubai, UAE	USD Account	X-4027
Citibank NA	Houghton Mifflin Company International Inc. Rep Office	Same as above	AED Account	X-4019
Citibank NA	Houghton Mifflin Company International, Inc.	Citi Tel Aviv, 21 Ha'arba'a Street, Tel Aviv, Israel, 64739	ILS	X-1001
Citibank NA	Houghton Mifflin Company International, Inc.	Same as above	USD	X-1028

**OSV-HMH Indemnity Escrow**

Financial Institution	Account Name	Address of Account	Purpose of the Account	Account Number
1 <sup>st</sup> Source Bank	Our Sunday Visitor Inc - Houghton Mifflin Harcourt Publishing Company Indemnity Escrow	1st Source Bank-PAMB, 306 East Main Street, Suite 100, Niles, MI 49120	Escrow established for OSV deal	X-4-01-3

**Greenwood Publishing Group Inc. Accounts**

Financial Institution	Account Name	Address of Account	Purpose of the Account	Account Number
Bank of America	Greenwood Publishing Group, Inc.	135 S. LaSalle Street IL4-135-14-02 Chicago, IL 60603	Local Deposits (New Hampshire)	X-3534
Bank of America	Greenwood Publishing Group, Inc.	Same as above.	GH Global Credit Card receipts	X-6556
Bank of America	Greenwood Publishing Group, Inc.	Same as above.	Heinemann PD Credit Cards	X-6569

**Advanced Learning Centers, Inc.**

<b>Financial Institution</b>	<b>Account Name</b>	<b>Address of Account</b>	<b>Purpose of the Account</b>	<b>Account Number</b>
Community Banks of Colorado	Advanced Learning Centers	7900 East 1 <sup>st</sup> Avenue NMLS #866293 Lowry Branch Denver, CO 80230	Operating Account	X-1500
Community Banks of Colorado	Advanced Learning Centers	Same as above.	Merchant Account	X-1527
Community Banks of Colorado	Advanced Learning Centers	Same as above.	Goldman Sachs Sweep Account	X-5924
Chase Bank	Advanced Learning Centers	JPMorgan Chase Bank, N.A P O Box 659754, San Antonio, TX 78265 - 9754	Collateral for Chase Business Credit Card (checking)	X-0435
Chase Bank	Advanced Learning Centers	Same as above.	Collateral for Chase Business Credit Card (savings)	X-6450

**EXHIBIT D**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re: : Chapter 11  
: :  
HOUGHTON MIFFLIN : Case No. 10-\_\_\_\_ (\_\_\_\_)  
HARCOURT PUBLISHING COMPANY, *et al.*, :  
: (Joint Administration Pending)  
Debtors. :  
----- X

**INTERIM ORDER AUTHORIZING DEBTORS TO (I) MAINTAIN  
AND USE EXISTING BANK ACCOUNTS, BOOKS, RECORDS  
AND BUSINESS FORMS; (II) MAINTAIN AND USE EXISTING  
CASH MANAGEMENT SYSTEM; (III) PROVIDE SUPERPRIORITY STATUS  
FOR INTERCOMPANY RECEIVABLES;  
AND (IV) WAIVE THE DEPOSIT AND INVESTMENT  
GUIDELINES OF SECTION 345 OF THE BANKRUPTCY CODE**

Upon consideration of the motion (the “Motion”)<sup>1</sup> of Houghton Mifflin Harcourt Publishing Company and its subsidiaries and affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order pursuant to sections 105(a), 345(b), 363(c)(1) and 364(c), 503, 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) (i) authorizing the continued use of existing bank accounts (the “Bank Accounts”), books, records and business forms; (ii) authorizing the continued use of the Debtors’ existing cash management system (the “Cash Management System”); (iii) granting superpriority status for intercompany accounts; and (iv) waiving the deposit and investment guidelines of section 345 of the Bankruptcy Code; and upon consideration of the Bayers Affidavit pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York, sworn to May 21, 2012; and this Court having jurisdiction to consider the

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<sup>1</sup> Capitalized terms used and not defined herein shall have the meaning ascribed to them in the Motion.

Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is GRANTED as modified herein.
2. The Debtors are authorized to (i) maintain, and continue to use their existing prepetition Bank Accounts, in the names and with the account numbers existing immediately prior to the commencement date of the Debtors' chapter 11 cases (the "Petition Date"), and treat such Bank Accounts as debtor-in-possession accounts; and (ii) deposit funds into and withdraw funds from existing prepetition Bank Accounts or accounts opened postpetition by all usual means, including, without limitation, checks, wires, automated clearinghouse transfers (the "ACH Transfers"), and other debits.
3. The Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their sole discretion; *provided, however*, that the Debtors may open a new bank account with

a banking institution not designated as an Authorized Depository under the U.S. Trustee Guidelines, only after obtaining (i) the consent of the U.S. Trustee and the Informal Creditor Group or (ii) a court order.

4. Any and all accounts opened by the Debtors on or after the Petition Date at any bank shall, for the purposes of this Order, be deemed a Bank Account (as if it had been opened prior to the Petition Date and listed in Exhibit C to the Motion), and any and all banks at which such accounts are opened shall similarly be subject to the rights and obligations of this Order.

5. Nothing contained herein shall prevent the banks (the “Banks”) at which the Bank Accounts are held from modifying or terminating any Bank Accounts or related services in accordance with the agreements governing such accounts or services.

6. The Banks are authorized to continue to treat, service, and administer such Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course and to receive, process and honor and pay any and all postpetition checks, drafts, wires, or ACH Transfers drawn on the Bank Accounts by the holders or makers thereof to the extent the Debtors have good funds standing to their credit with such Bank, as the case may be.

7. Notwithstanding anything to the contrary in any other “First Day Order” or other order of this Court, the Banks (i) are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH Transfers should be honored or dishonored, consistent with any order(s) of this Court and governing law, whether such checks, drafts, wires, or ACH Transfers are dated prior to, on, or subsequent to the Petition Date, and whether the Banks believe the payment is or is

not authorized by an order of this Court; (ii) have no duty to inquire as to whether such payments are authorized by an order of this Court; and (iii) have no duty to make payments in respect thereto unless the Debtors have good funds standing to their credit with such Bank.

8. The Banks shall not be liable to any party on account of (i) following the Debtors' instructions or representations as to any order of this Court; (ii) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored; or (iii) an innocent mistake made despite implementation of reasonable item handling procedures.

9. In accordance with current practice and the agreement governing the Bank Accounts, the Banks are authorized to "charge back" to the Debtors' accounts any amounts incurred by the Banks resulting from returned checks or other returned items, and the Debtors are authorized to pay any fees and expenses owed to the Banks, in each case regardless of whether such items were deposited prepetition or postpetition or relate to prepetition or postpetition items.

10. The Debtors are authorized to maintain and continue to use their checks and any and all other Business Forms substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors in possession, until confirmation of the Prepackaged Plan.

11. The Debtors and their duly appointed agents and custodians are authorized and empowered to (i) continue to manage the Debtors' cash pursuant to the Cash Management System maintained by the Debtors and their non-debtor affiliates prior to the Petition Date; (ii) continue to perform their obligations under the agreements

governing such system, including paying all prepetition and postpetition fees and expenses incurred in connection therewith; *provided, however*, that prior to the Effective Date (as defined in the Prepackaged Plan), the Debtors must obtain the prior written consent of the Informal Creditor Group for any Intercompany Transaction giving rise to an Intercompany Claim against a Debtor of \$3.5 million or more; and (iii) transfer funds by and among the Debtors, and by and among their respective Bank Accounts and other accounts maintained with or by their duly appointed agents and custodians, as and when needed and in the amounts necessary or appropriate to maintain their operations and facilitate the orderly operation of their estates or businesses.

12. All Intercompany Claims incurred in the ordinary course of business between the Debtors and other Debtors, as well as between Debtors and non-Debtors arising from Intercompany Transactions shall be accorded superpriority status with priority over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code; *provided, however*, that all superpriority claims for intercompany receivables shall be subordinate in all respects to (i) any superpriority claims granted to the postpetition lenders, (ii) any claims under section 507(b) of the Bankruptcy Code granted to the Prepetition Secured Creditors, (iii) the Prepetition Secured Creditor Claims and (iv) any priorities, liens, claims and security interests that may be granted by the Court, from time to time.

13. To the extent the Debtors are not already in compliance the requirements of section 345(b) of the Bankruptcy Court, compliance with those requirements is hereby waived until confirmation of the Prepackaged Plan.

14. Within three (3) business days after entry hereof, the Debtors shall serve a copy of the Motion and this Order upon (i) the United States Trustee, Attention: Andrea B. Schwartz; (ii) counsel for the DIP/Exit Agent; (iii) the parties identified on the Debtors' consolidated list of twenty (20) largest unsecured creditors; (iv) counsel for the Informal Creditor Group; (v) counsel for the Prepetition Senior Secured Notes Trustee; (vi) counsel for the Prepetition Agent; (vii) counsel for the Prepetition L/C Bank; (viii) the Securities and Exchange Commission; (ix) the United States Attorney for the Southern District of New York; (x) the Internal Revenue Service; (xi) the Environmental Protection Agency; (xii) the Pension Benefit Guaranty Corporation; (xiii) the New York State Department of Taxation; (xiv) the New York City Tax Department; (xv) such other parties entitled to notice pursuant to Local Rule 9013-1(m) and (xvi) the Banks listed on Exhibit C to this Motion.

15. A hearing shall be held to consider the relief granted herein on a final basis on \_\_\_\_\_, 2012, at \_\_m., before the Honorable \_\_\_\_\_, United States Bankruptcy Judge, in Courtroom \_\_\_\_\_ Alexander Hamilton Court House, One Bowling Green, New York, New York; and any objections to entry of such order shall be in writing, filed with the Court in accordance with General Order M-242, and served upon (i) the United States Trustee, Attention: Andrea B. Schwartz; (ii) counsel for the DIP/Exit Agent; (iii) the parties identified on the Debtors' consolidated list of twenty (20) largest unsecured creditors; (iv) counsel for the Informal Creditor Group; (v) counsel for the Prepetition Senior Secured Notes Trustee; (vi) counsel for the Prepetition Agent; (vii) counsel for the Prepetition L/C Bank; (viii) the Securities and Exchange Commission; (ix) the United States Attorney for the Southern District of New York;

(x) the Internal Revenue Service; (xi) the Environmental Protection Agency; (xii) the Pension Benefit Guaranty Corporation; (xiii) the New York State Department of Taxation; (xiv) the New York City Tax Department; (xv) such other parties entitled to notice pursuant to Local Rule 9013-1(m) and (xvi) the Banks listed on Exhibit C to this Motion.

16. Any objections or responses to the Motion shall be filed on or before May [ ], 2012 at 4:00 p.m. prevailing Eastern Time and served on parties in interest as required by the Local Rules.

17. . This Order, and all acts taken in furtherance of or reliance upon this Order, shall be effective notwithstanding the filing of an objection.

18. Notwithstanding Bankruptcy Rules 6003 and 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry. The requirements of Local Rule 9013-1(b) are hereby waived.

19. Service of this Order with a copy of the Motion as provided above shall be deemed good and sufficient notice of the Motion and the final hearing thereon.

Dated: \_\_\_\_\_, 2012  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT E**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
In re: : Chapter 11  
: :  
HOUGHTON MIFFLIN : Case No. 10-\_\_\_\_ (\_\_\_\_)  
HARCOURT PUBLISHING COMPANY, *et al.*, :  
: (Joint Administration Pending)  
Debtors. :  
----- x

**FINAL ORDER AUTHORIZING DEBTORS TO (I) MAINTAIN  
AND USE EXISTING BANK ACCOUNTS, BOOKS, RECORDS  
AND BUSINESS FORMS; (II) MAINTAIN AND USE EXISTING  
CASH MANAGEMENT SYSTEM, AS MODIFIED; AND (III) PROVIDE  
SUPERPRIORITY STATUS FOR INTERCOMPANY RECEIVABLES**

Upon consideration of the motion (the “Motion”)<sup>1</sup> of Houghton Mifflin Harcourt Publishing Company and certain of its subsidiaries and affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order pursuant to sections 105(a), 345(b), 363(c)(1) and 364(c), 503, 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) (i) authorizing the continued use of existing bank accounts (the “Bank Accounts”), books, records and business forms; (ii) authorizing the continued use of the Debtors’ existing cash management system (the “Cash Management System”); (iii) granting superpriority status for intercompany accounts; and (iv) waiving the deposit and investment guidelines of section 345 of the Bankruptcy Code; and upon consideration of the Bayers Affidavit pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York, sworn to on May 21, 2012; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C.

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<sup>1</sup> Capitalized terms used and not defined herein shall have the meaning ascribed to them in the Motion.

§§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and the relief requested being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at the interim hearing before the Court; and the Court having determined that the legal and factual bases set forth in the Motion and at the interim hearing established just cause for entry of an interim order (the “Interim Order”) granting the requested relief; and the Court having held a final hearing (the “Hearing”) on the relief requested in the Motion; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing established just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED that:

1. The Motion is GRANTED as modified herein.
2. All objections not previously withdrawn are overruled.
3. The provisions of this order (the “Final Order”) supersede the provisions of the Interim Order previously entered on the Motion by this Court on May [ ], 2012 ECF. No. [ ], and in the event of any irreconcilable inconsistency between this Final Order and the Interim Order, the terms of this Final Order shall govern and control.
4. Except as otherwise set forth below, the provisions of this Final Order shall be effective, *nunc pro tunc*, to the commencement date of the Debtors’ chapter 11 cases (the “Petition Date”).

5. The Debtors are authorized to (i) maintain, and continue to use their existing prepetition Bank Accounts, in the names and with the account numbers existing immediately prior to the Petition Date, and treat such Bank Accounts as debtor-in-possession accounts; and (iii) deposit funds into and withdraw funds from existing prepetition Bank Accounts or accounts opened postpetition by all usual means, including, without limitation, checks, wires, automated clearinghouse transfers (the “ACH Transfers”), and other debits.

6. The Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their sole discretion; *provided, however*, that the Debtors may open a new bank account with a banking institution not designated as an Authorized Depository under the U.S. Trustee Guidelines only after obtaining the consent of (i) the U.S. Trustee and the Informal Creditor Group; or (ii) a court order.

7. Any and all accounts opened by the Debtors on or after the Petition Date at any bank shall, for the purposes of this Order, be deemed a Bank Account (as if it had been opened prior to the Petition Date and listed in Exhibit C to the Motion), any and all banks at which such accounts are opened shall similarly be subject to the rights and obligations of this Order.

8. Nothing contained herein shall prevent the banks (the “Banks”) at which the Bank Accounts are held from modifying or terminating any Bank Accounts or related services in accordance with the agreements governing such accounts or services.

9. The Banks are authorized to continue to treat, service, and administer such Bank Accounts as accounts of the Debtors as debtors-in-possession

without interruption and in the usual and ordinary course and to receive, process and honor and pay any and all postpetition checks, drafts, wires, or ACH Transfers drawn on the Bank Accounts by the holders or makers thereof to the extent the Debtors have good funds standing to their credit with such Bank, as the case may be.

10. Notwithstanding anything to the contrary in any other “First Day Order” or other order of this Court, the Banks (i) are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH Transfers should be honored or dishonored, consistent with any order(s) of this Court and governing law, whether such checks, drafts, wires, or ACH Transfers are dated prior to, on, or subsequent to the Petition Date, and whether the Banks believe the payment is or is not authorized by an order of this Court; (ii) have no duty to inquire as to whether such payments are authorized by an order of this Court; and (iii) have no duty to make payments in respect thereto unless the Debtors have good funds standing to their credit with such Bank.

11. The Banks shall not be liable to any party on account of (i) following the Debtors’ instructions or representations as to any order of this Court; (ii) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored; or (iii) an innocent mistake made despite implementation of reasonable item handling procedures.

12. In accordance with current practice and the agreement governing the Bank Accounts, the Banks are authorized to “charge back” to the Debtors’ accounts any amounts incurred by the Banks resulting from returned checks or other returned items, and the Debtors are authorized to pay any fees and expenses owed to the

Banks, in each case regardless of whether such items were deposited prepetition or postpetition or relate to prepetition or postpetition items.

13. The Debtors are authorized to maintain and continue to use their checks and any and all other Business Forms substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors-in-possession until confirmation of the Prepackaged Plan.

14. The Debtors and their duly appointed agents and custodians are authorized and empowered to (i) continue to manage the Debtors' cash pursuant to the Cash Management System maintained by the Debtors and their non-Debtor affiliates prior to the Petition Date; (ii) continue to perform their obligations under the agreements governing such Cash Management System, including paying all prepetition and postpetition fees and expenses incurred in connection therewith; *provided, however*, that prior to the Effective Date (as defined in the Prepackaged Plan), the Debtors must obtain the prior written consent of the Informal Creditor Group for any Intercompany Transaction giving rise to an Intercompany Claim against a Debtor of \$3.5 million or more; and (iii) transfer funds by and among the Debtors, and by and among their respective Bank Accounts and other accounts maintained with or by their duly appointed agents and custodians, as and when needed and in the amounts necessary or appropriate to maintain their operations and facilitate the orderly operation of their estates or businesses.

15. All Intercompany Claims incurred in the ordinary course of business between the Debtors and other Debtors, and between the Debtors and non-Debtors arising from Intercompany Transactions shall be accorded superpriority status

with priority over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code; *provided, however*, that all superpriority claims for intercompany receivables shall be subordinate in all respects to (i) any superpriority claims granted to the postpetition lenders, (ii) any claims under section 507(b) of the Bankruptcy Code granted to the Prepetition Secured Creditors, (iii) the Prepetition Secured Creditor Claims and (iv) any priorities, liens, claims and security interests that may be granted by the Court, from time to time.

16. To the extent the Debtors are not already in compliance the requirements of section 345(b) of the Bankruptcy Court, compliance with those requirements is hereby waived until confirmation of the Prepackaged Plan.

17. Notwithstanding Bankruptcy Rules 6003 and 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry. The requirements of Local Rule 9013-1(b) are hereby waived.

Dated: \_\_\_\_\_, 2012  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE